

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.105 and chapter 554D, the Environmental Protection Commission hereby gives Notice of Intended Action to adopt new Chapter 15, “Cross-Media Electronic Reporting,” Iowa Administrative Code.

The purpose of proposed new Chapter 15 is to adopt the U.S. Environmental Protection Agency’s (EPA) electronic reporting requirements for programs under Title 40 of the Code of Federal Regulations. EPA’s Cross-Media Electronic Reporting Rule (CROMERR) was born out of EPA’s goal to make electronic reporting and electronic record keeping available under authorized programs. EPA expects that CROMERR will (1) reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges; (2) improve the data and the various business processes associated with its use; and (3) maintain the level of corporate and individual responsibility and accountability for electronic reports and records that currently exist in the paper environment.

CROMERR applies to states, tribes, and local programs that administer or seek to administer authorized programs under Title 40 and establishes standards for acceptable electronic document receiving systems against which EPA will assess authorized program electronic reporting elements. These standards address six function-specific categories: (1) system security; (2) electronic signature method; (3) submitter registration; (4) signature/certification scenario; (5) transaction record; and (6) system archives.

CROMERR impacts 40 CFR Parts 3, 9, 51, 60, 61, 63, 64, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763. This rule making impacts electronic data currently received or planned to be received in federally mandated programs in the Environmental Services Division of the Department. Programs already receiving electronic information must modify the system(s) or create new systems to be compliant with CROMERR standards.

CROMERR does not require regulated entities to submit electronic data or require programs to accept electronic data; however, it requires that any Title 40-authorized program that chooses to use electronic submission rather than paper for reporting purposes must receive EPA approval of program revisions or modifications that address any Title 40-authorized program’s electronic reporting implementations. As a result, programs accepting or planning on accepting submission of electronic documents must submit an application as required by 40 CFR Part 3 for EPA review and approval. Adoption of this rule is required for the CROMERR application to EPA.

A public hearing will be held on February 15, 2010, at 10 a.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. At the public hearing, comments on the proposed new chapter may be submitted orally or in writing. All comments must be received no later than February 16, 2010.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Wendy Rains at (515)281-6061 to advise of any specific needs.

This rule is intended to implement Iowa Code section 455B.105 and chapter 554D.

The following amendment is proposed.

Adopt the following **new** 567—Chapter 15:

CHAPTER 15
CROSS-MEDIA ELECTRONIC REPORTING

567—15.1(455B,554D) Purpose. This rule implements the cross-media electronic reporting rule (also known as CROMERR) as defined by 40 CFR Part 3.

15.1(1) Applicability. The provisions of this subrule shall apply to persons and signatories who submit electronic reports or other documents to satisfy requirements of Title 40 of the Code of Federal Regulations for authorized programs for which the department is accepting specified electronic documents and other media used for electronic reporting, except for the following:

- a. Documents submitted via facsimile;
- b. Electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape;
- c. Electronic documents submitted through an electronic document receiving system pursuant to a non-federal state-only program; or
- d. Data transfers between the department and the U.S. Environmental Protection Agency, local governments, or tribes as part of an authorized program or administrative arrangement.

15.1(2) Definitions. For the purpose of this rule, the following terms shall have the meanings indicated below:

“Authorized program” means a federal program that the U.S. Environmental Protection Agency (EPA) has delegated to, authorized, or approved the department, on behalf of the state of Iowa, to administer, or a program that the EPA has delegated to, authorized, or approved the department to administer in lieu of a federal program, under provisions of 40 CFR and for which the delegation, authorization or approval has not been withdrawn or expired.

“Copy of record” means a true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A “copy of record” includes:

1. Any electronic signature contained in or logically associated with the document;
2. The date and time of receipt; and
3. Any other information used to record the meaning of the document or the circumstances of its receipt.

“Electronic document” means any information that is submitted to one of the department’s electronic document receiving systems in digital form to satisfy requirements of an authorized program and may include data, text, sounds, codes, computer programs, software, or databases.

“Electronic document receiving system” means the apparatus, procedures, software, or records established and used by the department to receive electronic documents in lieu of paper.

“Electronic signature” means any information in digital form attached to or logically associated with a record submitted to one of the department’s electronic document receiving systems and executed or adopted by a person with the intent of expressing the same meaning as would a handwritten signature if affixed to an equivalent paper document with the same content.

“Electronic signature agreement” means a written agreement prepared by the department and signed by an individual with respect to an electronic signature device that the individual will use to create the individual’s electronic signature.

“Electronic signature device” means a code or other mechanism, assigned to an individual who is uniquely entitled to use it and that is then used to create the individual’s electronic signature.

“Federal program” means any program administered by EPA under any provision of 40 CFR.

“Handwritten signature” means the scripted name or legal mark of an individual made by that individual with the present intention to authenticate a signature in a permanent form.

“Signatory” means an individual authorized to sign and who signs a document submitted to one of the department’s electronic document receiving systems pursuant to an electronic signature agreement.

“State program” means any program other than an authorized program that is implemented by the department under the laws of the state of Iowa.

“Valid electronic signature” means an electronic signature on an electronic document created by using an electronic signature device that the identified signatory is uniquely entitled to use for signing the electronic document, provided the device has not been compromised and provided the signatory is

an individual authorized to sign the document by virtue of legal status or relationship to the entity on whose behalf the signature is created.

15.1(3) Use of electronic document receiving systems.

a. Announcement on public Web site. When the director has announced on the department's public Web site that the department is accepting specified electronic documents in lieu of paper to satisfy requirements under each authorized program, individuals who submit such electronic documents must use the department's CROMERR-compliant electronic document receiving systems.

b. Submittals requiring signature. Any electronic document submitted to the department must bear a valid electronic signature of a signatory, if that signatory would be required under the authorized program to sign the paper document for which the electronic document substitutes.

c. Submittals not requiring signature. If no signature is required under the authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through the department's CROMERR-compliant electronic document receiving system without an electronic signature or an electronic signature agreement.

15.1(4) Electronic signature agreement.

a. Agreement to be executed. In the case of an electronic document that must bear the electronic signature of a signatory under an authorized program, each signatory must execute an electronic signature agreement.

b. Form and content of agreement. All agreements shall be in writing and filed with the electronic document receiving system administrator via a mail delivery service or by hand delivery. The agreement shall include the information and follow the format as defined by the department. The agreement form may be downloaded and printed for execution from the department's public Web site.

c. Verification. The identity and authority of each individual submitting an electronic signature agreement shall be verified by the state of Iowa. After the state of Iowa has satisfactorily completed the verification, the department shall notify the individual electronically that the electronic signature device has been activated and access to the database has been granted.

d. Certification. Each submission authorized by an electronic signature shall contain the following statement: "I certify under penalty of law that I have had the opportunity to review, in human-readable format, the content of the electronic document to which I here certify and attest, and I further certify under penalty of law that, based on the information and belief formed after reasonable inquiry, the statements and information contained in this submission are true, accurate, and complete. I understand that making any false statement, representation, or certification of this submission may result in criminal penalties."

15.1(5) Valid electronic signature.

a. Signatory. An authorized signatory may not allow another individual to use the electronic signature device unique to the authorized signatory's electronic signature.

b. Unique signature device. When the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

(1) Protect the electronic signature device from compromise; and

(2) Report to the department and to the state of Iowa, within one business day of discovery, any evidence that the security of the device has been compromised.

15.1(6) Effect of electronic signature.

a. Electronic signature establishes intent. The presence of an electronic signature on an electronic document submitted to the department establishes that the signatory intended to sign the electronic document and to submit it to the department to fulfill the purpose of the electronic document.

b. Electronic signature legally binding. Where an electronic document submitted to satisfy a reporting requirement of an authorized program bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same reporting requirement. If an applicable law or rule requires a handwritten signature on a document, an electronic signature satisfies that requirement.

15.1(7) Enforcement.

a. Penalties and other remedies. If the submitter or signatory fails to comply with a reporting requirement by failing to comply with the provisions of this chapter, the electronic signature agreement, or other applicable reporting requirements, the submitter or signatory is subject to any appropriate civil or criminal penalties or other remedies under Iowa law.

b. Electronic document as evidence. Nothing in this chapter or the authorized program limits the use of an electronic document, copy of record, or other information derived from an electronic document as evidence in enforcement proceedings.